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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

vs.

GABRIEL COWAN METCALF,

Defendant.

Case No. CR-23-103-BLG-SPW

**DEFENDANT’S SENTENCING
MEMORANDUM**

COMES NOW the Defendant, through counsel, and offers the following Memorandum to this Honorable Court in anticipation of the Sentencing Hearing scheduled for August 2, 2024.

INTRODUCTION

The PSR anticipates an advisory guideline range of 0-6 months from a total offense level of 6 and Criminal History Category of I. PSR at ¶63. Mr. Metcalf has not objected to that range.

DISCUSSION – 18 U.S.C. § 3553(a)

The overarching statutory charge for a district court is to “impose a sentence sufficient, but not greater than necessary” to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed educational or vocational training, medical care or other correctional treatment. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008); 18 U.S.C. § 3553 (a) and (a)(2).

Mr. Metcalf is 50 years old and has one conviction for DUI when he was 17. PSR at ¶42. On September 1, 2022, an order of protection was issued by a court in Yellowstone County in favor of Mr. Metcalf and his mother, and against their neighbor, which prohibited their neighbor from coming within 1,500 feet of Mr. Metcalf, his mother, or their residence. PSR at ¶11. Later that month, after this individual had moved, Mr. Metcalf reported to law enforcement that this individual had been driving through the alley behind their house on numerous occasions. *Id.* Mr. Metcalf was told by law enforcement to make a video recording if it happened again. On September 29, 2022, a video was captured showing this individual in the alley behind Mr. Metcalf’s house, well within 1,500 feet of his residence, yelling at Mr. Metcalf before eventually discharging a can of pepper spray in Mr. Metcalf’s face. *Id.*

The following day, Mr. Metcalf reported this violation to law enforcement and provided approximately “20 or more” videos of this individual driving past the protected property. *Id.* Over the next month, Mr. Metcalf and/or his mother reported that this individual continued to violate the order of protection. *Id.* On March 29, 2023, the State of Montana filed an Information charging this individual with Violation of an Order of Protection, 3rd or Subsequent Offense, a felony. *See* Yellowstone County District Court Cause No. DC-23-397. The trial in that matter is set for July 25, 2024, one week after this filing. Additionally, that individual was charged on January 4, 2024, with Obstructing a Peace Officer and Resisting Arrest in Yellowstone County Justice Court. *See* Cause No. CR-24-09.

On August 2, 2023, Billings Police were dispatched to a complaint of an individual with a firearm near Broadwater Elementary School. PSR at ¶14. Mr. Metcalf’s residence is directly across from the school, and it was quickly determined that he had armed himself to protect against this individual. *Id.* Mr. Metcalf and his mother said that this individual had continued to drive by the property and make threats. The Billings Police Department determined that Mr. Metcalf’s carrying of a weapon was not in violation of Montana law, but it continued to receive calls from concerned citizens about Mr. Metcalf. In the overwhelming majority of these calls,

the caller expressed that Mr. Metcalf was not being threatening but that they were calling just because it seemed unusual.

Mr. Metcalf was told several times by law enforcement that he was not doing anything illegal. On August 23, 2023, the Billings Gazette ran an article on the front page wherein a spokesperson for the BPD said “at this time he has not done anything illegal and we do not have the authority to arrest him, take his firearms, or force him to stop coming out into his yard.”¹ Billings Police officers continued to respond to these calls, however, and asked Mr. Metcalf several times to voluntarily stop carrying a firearm near his home.

Mr. Metcalf called the FBI for help, and on August 17, 2023 he had a conversation with two federal agents. PSR at ¶18. One ATF Task Force Officer on the call had previously been a BPD night shift patrol officer and was familiar with the situation between Mr. Metcalf and his neighbor, but he did not let on during the call. *Id.* Mr. Metcalf had similar interactions with several officers: they did not want to discuss his concerns with him, they just wanted him to stop while telling him each time that he wasn’t doing anything illegal and they couldn’t make him. During the August 17 call, one agent told Mr. Metcalf he was “entering the school zone” when he would step onto the sidewalk in violation of federal law. Mr. Metcalf asserts that he did not carry his firearm outside following that call, and no reports of him carrying his

¹ Billings Gazette, August 23, 2023, Pg. 1: “Man with rifle near school”.

firearm after August 17 were disclosed in discovery. Mr. Metcalf was arrested on August 22, 2022, for possessing a firearm within 1,000 feet of a school in violation of 18 U.S.C. § 922(q)(2)(A). PSR at ¶21.

Mr. Metcalf's parents divorced when he was 7 years old. PSR at ¶50. His mother moved out of state and Mr. Metcalf and his siblings stayed in Colorado with their father. *Id.* He has lived a mostly quiet life since then, moving briefly to Hawaii with his father when he was 16 and then for a few months to Seattle with a girlfriend in his 20s. *Id.* He moved to Billings to help care for his mother in 2011. *Id.* Mr. Metcalf has a very small circle of people in his life and is not known to the community in Billings. This incident with his neighbor was traumatizing for him, caused him legitimate fear, and he genuinely believed that law enforcement did not appreciate the danger this individual posed to Mr. Metcalf and his mother. When law enforcement approached him, told him he wasn't breaking the law, and then repeatedly continued to approach him and ask him to stop carrying his weapon, he was confused.

The Indictment in this case alleges that Mr. Metcalf committed his offense "on or between August 2, 2023, and August 17, 2023", and there no reports of him carrying a firearm on his property or on the sidewalk near it following his phone call

with federal agents on August 17, even though he remained in his home for another 5 days.

CONCLUSION

For the reasons expressed in this Memorandum, Mr. Metcalf respectfully asks the Court to accept the plea agreement in this case and impose a non-custodial sentence.

RESPECTFULLY SUBMITTED July 18, 2024.

/s/ Russell A. Hart

RUSSELL A. HART

Federal Defenders of Montana

Counsel for Defendant

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on July 18, 2024, the foregoing document was served on the following persons by the following means:

- 1, 2 CM-EDF
- Hand Delivery
- 3 Mail
- Overnight Delivery Service
- Fax
- E-Mail

1. CLERK, UNITED STATES DISTRICT COURT

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3. GABRIEL COWAN METCALF
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/s/ Russell A. Hart

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